



[7590-01-P]

NUCLEAR REGULATORY COMMISSION

10 CFR Part 140

[NRC-2016-0164]

RIN 3150-AJ81

Increase in the Maximum Amount of Primary Nuclear Liability Insurance

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is amending its regulations to increase the required amount¹ of primary nuclear liability insurance from \$375 million to \$450 million for each nuclear reactor that is licensed to operate, is designed for the production of electrical energy, and has a rated capacity of 100,000 electrical kilowatts or more. This change conforms to the provision in the Price-Anderson Amendments Act of 1988 (Pub. L. 100–408) (Price-Anderson Act) that the amount of primary financial protection required of licensees by the NRC shall be the maximum amount available at reasonable cost and on reasonable terms from private sources.

¹The title listed in the information submitted by the NRC for the *Unified Agenda* was “Increase in the Maximum Limit of Primary Nuclear Liability Insurance.” The title was changed here to reflect that the regulation makes reference to “Maximum Amount.” The use of the term “Maximum Limit” is an incorrect description of the statutory requirement and the regulation revision.

DATES: *Effective Date:* This final rule is effective on January 1, 2017.

ADDRESSES: Please refer to Docket ID NRC-2016-0164 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- **Federal Rulemaking Web Site:** Go to <http://www.regulations.gov> and search for Docket ID NRC-2016-0164. Address questions about NRC dockets to Carol Gallagher; telephone: 301-415-3463; e-mail: Carol.Gallagher@nrc.gov. For technical questions, contact the individual listed in the FOR FURTHER INFORMATION CONTACT section of this document.

- **NRC's Agencywide Documents Access and Management System (ADAMS):**
You may obtain publicly-available documents online in the ADAMS Public Documents collection at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "ADAMS Public Documents" and then select "[Begin Web-based ADAMS Search.](#)" For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to pdr.resource@nrc.gov. The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in the SUPPLEMENTARY INFORMATION section.

- **NRC's PDR:** You may examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Natreon Jordan, Office of Nuclear Reactor Regulation, telephone: 301-415-7410, e-mail: Natreon.Jordan@nrc.gov; U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

SUPPLEMENTARY INFORMATION:

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I. Discussion

The NRC's regulations in part 140 of title 10 of the *Code of Federal Regulations* (10 CFR), "Financial Protection Requirements and Indemnity Agreements," provide requirements and procedures for implementing the financial protection requirements for certain licensees and other persons under the Price-Anderson Act, incorporated as Section 170 of the Atomic Energy Act of 1954, as amended (AEA). The Price-Anderson Act states that, for each nuclear reactor that is licensed to operate, is designed for the production of electrical energy, and has a rated capacity of 100,000 electrical kilowatts or more (henceforth referred to as large operating reactors), "the amount of primary financial protection required shall be the maximum amount available at reasonable cost and on reasonable terms from private sources." (Section 170(b) of the AEA) This requirement of the Price-Anderson Act is implemented in the NRC's regulations at § 140.11(a)(4), "Amounts of financial protection for certain reactors." The current maximum amount of primary financial protection available from private sources is \$375 million. Therefore, § 140.11(a)(4) currently requires large commercial operating reactors to have and maintain primary nuclear liability insurance in the amount of \$375 million.

On June 15, 2016, American Nuclear Insurers (ANI), the underwriter of American nuclear liability policies, acting on behalf of its member companies, notified the NRC that it will be increasing "its maximum available primary nuclear liability limit from \$375 million to \$450 million, effective on January 1, 2017" (ADAMS Accession No. ML16239A254). The ANI makes such adjustments on a non-periodic basis. The last such adjustment was made in 2010, and the NRC revised § 140.11 to reflect the increased maximum available amount of primary nuclear liability insurance (75 FR 16645; April 2, 2010).

To implement this adjustment, in accordance with the Price-Anderson Act, the NRC is revising 10 CFR part 140 to require large operating reactors to have and maintain \$450 million in primary financial protection.

The NRC is not currently revising the appendices in § 140.91, § 140.92, or § 140.93 that provide general forms of liability policies and indemnity agreements that were determined to be acceptable to the Commission. These appendices include historical insurance providers and protection amounts for primary liability insurance that are no longer in use (for example, values of \$124 million and \$36 million from the 1979 final rule (44 FR 20632; April 6, 1979) and values of \$200 million, \$155 million, and \$45 million from the 1989 final rule (54 FR 24157; June 6, 1989)). However, these appendices continue to provide relevant general forms of policies and agreements.

II. Rulemaking Procedure

This final rule is being issued without prior public notice or opportunity for public comments. The Administrative Procedure Act (5 U.S.C. 553(b)(B)) does not require an agency to use the public notice and comment process “when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.” In this instance, the NRC finds, for good cause, that solicitation of public comment on this final rule is unnecessary because the Price-Anderson Act requires a non-discretionary adjustment in the maximum amount required for primary nuclear liability insurance. Requesting public comment on this non-discretionary adjustment, which is required by statute, would not result in a change to the adjusted amount.

III. Section-by-Section Analysis

The following paragraphs describe the specific changes that are reflected in this final rule.

Section 140.11 Amounts of financial protection for certain reactors.

In paragraph (a)(4), this final rule removes “\$375,000,000” and replaces it with the increased maximum amount of primary nuclear liability insurance of “\$450,000,000.”

IV. Regulatory Flexibility Certification

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), the NRC certifies that this final rule does not have a significant economic impact on a substantial number of small entities. This final rule affects only the licensing and operation of nuclear power plants. The companies that own these plants do not fall within the scope of the definition of “small entities” set forth in the Regulatory Flexibility Act or the size standards established by the NRC (10 CFR 2.810).

V. Regulatory Analysis

A regulatory analysis was not prepared for this final rule because the change in the maximum amount of nuclear liability insurance is mandated by the Price-Anderson Act.

VI. Backfit and Issue Finality

The NRC has determined that the backfit rule does not apply to this final rule. A backfit analysis is not required for this final rule because this amendment is mandated by the Price-Anderson Act.

VII. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111-274) requires Federal agencies to write documents in a clear, concise, and well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, “Plain Language in Government Writing,” published June 10, 1998 (63 FR 31883).

VIII. National Environmental Policy Act

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

IX. Paperwork Reduction Act

This final rule does not contain any new or amended collections of information subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). Existing collections of information were approved by the Office of Management and Budget (OMB), approval number 3150-0039.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the document requesting or requiring the collection displays a currently valid OMB control number.

X. Congressional Review Act

This final rule is a rule as defined in the Congressional Review Act (5 U.S.C. 801-808). However, the Office of Management and Budget has not found it to be a major rule as defined in the Congressional Review Act.

List of Subjects in 10 CFR Part 140

Criminal penalties, Extraordinary nuclear occurrence, Insurance, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Penalties, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR part 140.

PART 140 -- FINANCIAL PROTECTION REQUIREMENTS AND INDEMNITY AGREEMENTS

1. The authority citation for part 140 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 161, 170, 223, 234 (42 U.S.C. 2201, 2210, 2273, 2282); Energy Reorganization Act of 1974, secs. 201, 202 (42 U.S.C. 5841, 5842); 44 U.S.C. 3504 note.

2. In § 140.11, paragraph (a)(4) is revised to read as follows:

§ 140.11 Amounts of financial protection for certain reactors.

(a) * * *

(4) In an amount equal to the sum of \$450,000,000 and the amount available as secondary financial protection (in the form of private liability insurance available under an industry retrospective rating plan providing for deferred premium charges equal to the pro rata share of the aggregate public liability claims and costs, excluding costs payment of which is not authorized by section 170o.(1)(D) of the Act, in excess of that covered by primary financial protection) for each nuclear reactor which is licensed to operate and which is designed for the production of electrical energy and has a rated capacity of 100,000 electrical kilowatts or more: Provided, however, that under such a plan for deferred premium charges for each nuclear reactor that is licensed to operate, no more than \$121,255,000 with respect to any nuclear incident (plus any surcharge assessed under subsection 170o.(1)(E) of the Act) and no more than \$18,963,000 per incident within one calendar year shall be charged. *Except that*, where a person is authorized to operate a combination of 2 or more nuclear reactors located at a single site, each of which has a rated capacity of 100,000 or more electrical kilowatts but not more than 300,000 electrical kilowatts with a combined rated capacity of not more than 1,300,000 electrical kilowatts, each such combination of reactors shall be considered to be a single

nuclear reactor for the sole purpose of assessing the applicable financial protection required under this section.

* * * * *

Dated at Rockville, Maryland, this 15th day of December, 2016.

For the Nuclear Regulatory Commission.

Michael R. Johnson,
Acting Executive Director
for Operations.

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